SOCIAL PLANNING COUNCIL OF METROPOLITAN TORONTO

DISCUSSION PAPER ON SOCIAL POLICY

A participant in the United Way

January, 1986

Number 3

AN EXAMINATION OF THE ONTARIO LEGAL AID PLAN

by

The Social Planning Council
of Metropolitan Toronto

© Copyright by

The Social Planning Council
of Metropolitan Toronto
950 Yonge Street, Suite 1000
Toronto, Ontario, M4W 2J4

Tel: (416) 961-9831

ISBN: 0-919456-19-7

Report prepared by: David Thornley, Program Director
Barbara Woolley, Secretary

Price: $6.00

CONTENTS

		Page
I.	INTRODUCTION	1
	1.1 Background	1
	1.2 Legal Aid Services: An Overview	3
II.	ELIGIBILITY TO RECEIVE ASSISTANCE	5
	2.1 Changes In Financial Eligibility Criteria	5
	2.2 Financial Eligibility and Low-Income	8
	2.3 Contributions From Other Financial Sources	11
	2.4 Other Issues	13
III.	COMPENSATION FOR LEGAL SERVICES	15
	3.1 A Comparison With Fee Schedules In Health Care	15
	3.2 Inadequate Fees Discourage Experienced Lawyers	16
	3.3 The Levy System Proposal	19
IV.	ACCESS TO LEGAL AID SERVICES	20
	4.1 The Legal Aid Certificate Program	20
	4.2 The Duty Counsel Program	23
	4.3 Community Legal Clinics	27
	4.4 An Inter-Provincial Comparison	30
V.	SUMMARY AND CONCLUSIONS	34

I. INTRODUCTION

In recent years, concerns have being expressed in many quarters that the Ontario Legal Aid Plan is no longer fulfilling its mandate. Increasingly, some would argue, the government has come to view legal aid as a social assistance program designed to provide legal services to the poorest of the poor. The initial intent of the plan, to guarantee access to necessary legal services regardless of ability to pay, seems to be in jeopardy.

1.1 Background

As early as 1976, the Ministry of the Attorney-General had expressed concerns about the cost of OLAP. For much of the last decade, the Ontario government has been preoccupied with the need for fiscal restraint as the growth in expenditures continued to outstrip increases in revenues. The more restrictive financial eligibility criteria introduced in 1980, coupled with the failure to match increases in the legal aid tariff to increases in the cost of living, led to concerns that the province's desire to reduce expenditures on social programs was adversely affecting the delivery of legal services to the poor.

In June 1983, the Social Planning Council released a report on the Ontario Legal Aid Plan focussing its attention on the following three areas: 1) eligibility to receive assistance; 2) financial compensation for participating lawyers; and 3) access to and availability of legal services. The Council's study concluded by making these observations.

- the financial eligibility criteria introduced in 1980 were so stringent that the maximum income limits for receiving

full legal aid assistance left many households with incomes at or below the poverty line ineligible.

- such restrictive access to legal aid services recasts the concept of guaranteeing rights to legal services into one of providing charity to the destitute.

- compensation to lawyers under the Tariff has fallen seriously behind increases in living costs and the cost of doing business. Since 1967, increases in inflation have outstripped Tariff adjustments by a factor of nearly 3 to 1.

- only 40 percent of lawyers participate in the plan, and a much smaller percentage do the bulk of legal aid work. The legal profession assumes 25 percent of the cost on all accounts submitted to OLAP, but this is financed by the already under-compensated lawyers doing legal aid work.

- the rate of refusal on legal aid applications doubled in the Toronto area between 1976 and 1981, rising from 19.3 to 39.5 percent. Evidence seemed to suggest an active discouragement of legal aid.

This discussion paper updates and enlarges upon the issues addressed in the 1983 report. Where the previous report looked primarily at the issues of accessibility and fair remuneration to lawyers under the legal aid certificate program, this paper takes a larger look at the provision of legal aid services including a more detailed assessment of the role played by community legal clinics and the duty counsel program.

1.2 Legal Aid Services: An Overview

Given the complexity and the generally adversarial nature of our legal system, it is vital that opposing sides in litigation understand the proceedings and have an equal opportunity to state their case to an impartial judge. The following observations by the Canadian Bar Association eloquently make the case for an adequately funded legal aid program.

> "If people must either deal alone with urgent legal problems before courts and tribunals, or abandon their rights without litigation, they will lose their respect for the rule of the law. Far from being a drain on public revenues, legal aid is an essential and cost effective element of the administration of justice.
>
> The cost of clumsy court proceedings prolonged by unrepresented parties is staggering. Deserted mothers and children, unable to obtain and enforce maintenance orders, invariably end up on welfare. Unjust convictions and inordinately long sentences of accused who appear without counsel increase correction costs. Those who feel ignored or mistreated by the law are more likely to disrespect it in the future, creating more victims and greater expense. Relatively inexpensive legal aid can substantially reduce all of these costs."*

The Ontario Legal Aid plan was established in 1967. It altered the concept of legal representation for the poor from one of "charity" to one of "right" and introduced a tariff of fees designed to provide lawyers acting under legal aid certificates with reasonable remuneration. The original tariff set fee levels deemed appropriate for clients with modest incomes. However, legal aid did not mean a complete abandonment of the "charity" concept as the profession superimposed upon the fee schedule a further 25

---

*Canadian Bar Association - National Legal Aid Liaison Committee, excerpt from a report "The Provision of Legal Aid Services In Canada," which was adopted as policy by the national executive in January, 1985.

per cent reduction on all accounts submitted for payment to the Legal Aid Plan.

In general, legal aid services in Ontario take one of three forms: (1) judicare, where a private lawyer, often chosen by the client, acts on a fee-for-service basis in relation to a tariff established by the legal aid plan; (2) staff, where legal services are provided by lawyers and para-legal workers employed in community legal aid clinics under the plan; and (3) duty counsel, where private lawyers furnish legal advice to unrepresented clients in summary offences or at first appearances and bail hearings on a contract basis.

The judicare program is administered through 47 area director's offices across the province. Clients must meet financial eligibility criteria and demonstrate a need for legal representation. If their application is accepted, they receive a certificate permitting them to secure a private lawyer to act on their behalf on the legal matters specified in the certificate.

The province's 44 community legal aid clinics meet a variety of consultation, counselling and referral needs, as well as providing legal representation in areas that the certificate program was not designed to meet. The community clinics provide assistance on landlord-tenant, unemployment insurance, immigration, worker's compensation, welfare and pensions in addition to limited labour relations, small claims and family law matters.

The duty counsel program offers an essential and cost-effective complement to the judicare program for the large numbers of persons likely to appear

unrepresented at first appearances and bail hearings. While there is a salaried duty counsel program in operation in Metropolitan Toronto, throughout the rest of Ontario lawyers serve this function on a rotation basis under contract with OLAP.

II. ELIGIBILITY TO RECEIVE ASSISTANCE

Prior to 1980, eligibility for legal aid was based on the actual amount of money left to the applicant per month after meeting all other financial responsibilities. Only those costs relating to food, clothing, entertainment and personal items were arbitrarily limited to 140 per cent of the allowance for such items under the province's Family Benefits Act. All other costs, including shelter, transportation, and consumer debt, were based on actual financial commitments.

2.1 Changes In Financial Eligibility Criteria

Under new financial eligibility criteria which took effect in April, 1980, a two-tier system was put in place which permitted some legal aid applicants to avoid undergoing a detailed assessment of their financial resources. Those satisfying the gross income limits under Part A were not required to complete the detailed assessment under Part B.

The Part B assessment analyzed the applicant's expenses in terms of three broad categories: 1) basic needs; 2) transportation, and 3) debt repayment. Basic needs included food, clothing, entertainment, personal needs and all shelter related expenses. The expenditure limit was set at 150 per cent of

Table 1

Changes To Financial Eligibility Criteria, March 1985

Category	Old Standard	New Standard
Basic Needs	- includes food, clothing, entertainment and personal expenditures as well as all shelter-related expenses	- excludes all shelter-related expenses which are to be treated separately; otherwise items included are the same
	- set at Family Benefits rate plus 50 per cent	- still set at Family Benefits rate plus 50 per cent
Shelter Costs	- expected to be covered from the expenditure limits included under basic needs; no separate allowance	- separate allowance for shelter up to a limit which varies by household size and generally reflects average market rent levels
Transportation	- expenses limited to cost of local public transit unless use of automobile deemed necessary for work	- no change in criteria but operating cost allowance for automobiles increase by nearly 40 per cent
	- permits debt repayment obligations relating to the purchase of an automobile up to $150/ month	- no change except that the upper limit on debt repayment increased to $210/month
Consumer Debt	- attempt to severely restrict the eligibility of consumer debt payments as an appropriate expense; limit set at $20/ month (single) and $40/ month (family of four)	- a significant liberalization of this category in recognition of the real situations facing many households; upper limits have been increased to $110/month (single) and $193/month (family of four)

the basic monthly benefits paid under Family Benefits for a similar household.

Transportation costs were limited to the cost of local public transportation unless the use of an automobile was deemed as necessary for work. Limits on monthly car operating expenses, installment payments on consumer debt, and a contingency allowance were also included. Finally, the assessment officer was given some discretion to permit additional expenditures for costs related to such items as health care or day care.

Apart from the basic needs limit which was adjusted periodically in response to changes in social assistance rates, the financial limits remained largely unchanged until the introduction of revised financial eligibility criteria in the spring of 1985. The new financial limits represent a substantial increase in the upper income limits permitted in most expenditure categories. A summary of the changes is contained in Table 1.

Table 2 compares the upper income limits permitted under the old and new standards for various household sizes. In summary, the effect of the new financial eligibility criteria is to increase the upper income limits for one and two person households by 40 to 60 per cent, and those for larger households between 25 and 45 per cent. For households which have no long-term indebtedness and do not own a car, upper income limits have increased from $6,840 to $10,464 for single persons and from $16,524 to $20,676 in the case of a family of four.

Table 2

Upper Income Limits For Receiving Legal Aid, 1985

Household Unit Size	Old Standard		New Standard	
	Maximum Debt With Car	No Debt Without Car	Maximum Debt With Car	No Debt Without Car
1	$9,384	$6,840	$15,168	$10,464
2	14,904	12,000	21,492	16,116
3	17,616	14,412	24,588	18,540
4	19,788	16,524	27,048	20,676
5	21,960	18,636	29,508	22,800
6	24,132	20,748	31,968	24,936

2.2 Financial Eligibility And Low-Income

In addition to the gross income limits established in the detailed assessment of financial eligibility above, applicants with incomes below a certain level, roughly corresponding to social assistance rates, are exempted from the requirement to undergo a detailed assessment. Table 3 examines the relationship between the gross income limits set out in the eligibility criteria and the income characteristics of low-income households.

Encouraging through some of these changes are, a number of difficulties remain to be addressed. To begin with, the income levels below which a detailed financial assessment is not required remain unreasonably low. They reflect income levels which are 30 to 45 per cent below the poverty line, and in some instances amount to less than 50 per cent of the Social

Planning Council's own budget adequacy standards for low and moderate income families in Metropolitan Toronto.

Table 3

Eligibility For Legal Aid And Low Income, 1985

Household Unit Size	Exemption if Income Below	No Debt Without Car	Maximum Debt With Car	Poverty Line	SPC Budget Adequacy
1	$6,600	$10,494	$15,168	$10,238	$12,655
2	9,600	16,116	21,492	13,508	16,885
3	10,920	18,540	24,588	18,068	21,890
4	12,120	20,676	27,048	20,821	27,300
5	13,200	22,800	29,508	24,263	31,200
6	14,280	24,936	31,968	26,500	34,750

To require households who are living on incomes which are thousands of dollars less than the poverty line to undergo a detailed financial assessment is totally inappropriate. Such households generally have insufficient incomes to purchase a range of goods and services necessary to permit them to function effectively as members of the social mainstream. They often face difficult choices in reducing expenditures for clothing, transportation, personal care items, and household maintenance in order to meet food and housing costs.

The above data indicates that many households living on incomes at or just above the poverty level will be expected to contribute all or part of their legal aid costs. In some instances, people with very modest incomes could be denied assistance altogether. This raises serious questions regarding

the reasonableness of the maximum expenditure limits. In January 1985, the Canadian Bar Association adopted as policy a legal aid report which would make all applicants whose household incomes were below the poverty line automatically eligible for fully subsidized legal aid, except where that household owned large non-essential assets.

Restrictive financial eligibility criteria have a surface appeal for those who do not wish to see assistance provided to those who are living beyond their means or who are capable of paying their own way. In fact, most people would agree that the bulk of legal aid money should be directed toward the most economically disadvantaged members of society.

It must be recognized however that legal aid was never intended to serve merely as a social assistance program, but rather as a guarantee of access to appropriate and necessary legal services for those unable to bear the cost of retaining private counsel. The following comments from a 1981 report of the Legal Aid Committee of the Law Society of Upper Canada are still relevant today:*

> "To deny access to legal services on the grounds that someone is living up to or beyond the limits of their income amounts to a refusal of access to the legal system and the destruction of that person's capacity to assert or defend their rights.
>
> Ability to pay must be viewed in the context of the nature of the legal services required, the seriousness of the need for services, the likely duration of the case, and the financial and social responsibilities of the applicant. In addition, ability to pay must also be judged against an accurate assessment of the actual cost of legal services retained on a private basis."

---

*Report of the Sub-Committee on Financial Eligibility Criteria, Legal Aid Committee of the Law Society of Upper Canada (March, 1981) S.R. Ellis, Q.C., Chairman.

2.3 Contributions From Other Financial Sources

Another problem area relating to financial eligibility concerns the expectation that family partners and other financial sources, including both persons and supporting organizations, will be able to contribute toward an applicant's legal costs. Other financial sources are broadly defined to include roommates, parents, grown children, as well as friends, relatives or even organizations which have demonstrated a willingness to assist or support the applicant, particularly during the last year.

A number of problems arise from these amendments. A single adult who has not resided with her parents for many years may be refused a certificate because her parents refused to be assessed as a possible financial source. An applicant in a landlord-tenant dispute may be denied assistance on the grounds that a roommate who stands to benefit either directly of indirectly is unwilling to be assessed. A recent immigrant may be denied assistance if a sponsoring organization refuses to contribute to his legal aid costs.

The Family Law Reform Act sets out clear limitations regarding the extent to which parents are financially responsible for the debts of their children. Generally they must support their children financially up to age 18. The new provision in the revised legal aid assessment guidelines runs counter to the spirit and intent of recent legal reforms. Community legal clinics indicate that they are already being approached to assist in appeals by applicants who were refused on the grounds that their parents refused to be assessed as a possible financial source.

The requirement to include sponsoring organizations poses a particular problem for recent immigrants. Any person or sponsoring organization which

furnished support in assisting an applicant to get established could be approached to make a contribution in meeting legal costs. Assistance might include anything from paying airfare, to providing temporary accommodation, to counselling and referral services. In the case of refugees seeking landed immigrant status the case is heard not by the local Area Director but by the Provincial Director with no potential to appeal the decision reached.

While the guidelines permit Area Directors discretion to waive a financial contribution from a Family partner, or to limit the investigation of other financial sources, the mechanism for doing so carries with it a large administrative burden. In submitting a report to the Area Director, assessment officers are required to identify all family partners and any other financial sources which may be able to assist the applicant. Assessment officers have no discretionary power in determining the reasonableness or appropriateness of any potential financial source.

This discretionary power rests solely with the Area Director. In deciding to waive a financial contribution from a family partner, or not to fully investigate the list of other financial sources in the assessment officer's report, the Area Director must submit a formal "exception" report providing reasons for that decision to the Provincial Director of OLAP. This administrative burden may act to discourage Area Directors from exercising discretion in favour of the applicant.

It is probably not unreasonable to approach other family members who have a legal obligation to support the applicant to make a contribution toward legal costs. On the other hand, no person with a demonstrated need for

legal aid services should be denied assistance on the grounds that someone other than the applicant is in a position to contribute financially to the applicant's legal costs but refuses to do so. This is especially true in the case of other financial sources.

2.4 Other Issues

An obvious inequity within the new assessment criteria relates to the treatment of households which own a car and/or have incurred substantial consumer debt, as compared with those households that rely on public transit and have no consumer debt. The upper income limits of car owners carrying the maximum permissible consumer debt are as much as $5,000 to $6,000 higher than for transit users without debts.

The present limitation on exempted liquid assets effectively discriminates against saving and living within one's means. While some households are allowed to exempt between $3,500 to $5,500 in debt repayment obligations, households without debts are allowed only $1,000 in liquid assets. A more equitable standard might permit households without debts to exempt an amount equal to three months of their basic needs and shelter costs, up to a maximum of $5,500. Such a reform would place households without debt on the same footing as those with debts.

Another concern with changes in the financial eligibility criteria relates to the treatment of liens against owner-occupied homes. Prior to March, 1985, liens were generally registered against the homes of legal aid applicants in order to recover financial assistance provided through the program when that home became a liquid asset.

The new guidelines for the first time charge interest on liens. Interest is to be charged at prime rate plus one per cent from the time that the solicitor's account is paid by the Plan and accumulates until the debt is satisfied. In a recent brief, the Ontario Association of Legal Clinics identifies two difficulties arising from this change.*

First, some legal aid recipients may be forced to sell their homes prematurely since liens will no longer be lifted when recipients face mortgage refinancing. For example, a legal aid debt of $1,500 could increase more than five fold in less than fifteen years assuming an average interest rate of 12 per cent. Such a large and growing debt could jeopardize the owner's ability to secure refinancing.

Second, the equity built up through years of home ownership represents the lion's share of retirement income for large numbers of modest income families. A manageable debt of $1,500 could grow to nearly $15,000 within twenty years, substantially eroding the retirement savings families have sacrificed greatly to achieve. Some legal aid applicants will be unwilling to put themselves in this situation, and will be reluctant to have a lien registered against their homes. As well as increasing demands on community clinics, the result may be that some clients proceed without legal counsel in situations where their own interests will thereby be prejudiced.

---

*Ontario Association of Legal Clinics, a brief submitted to the Legal Aid Committee of the Canadian Bar Association - Ontario (September, 1985).

III. COMPENSATION FOR LEGAL SERVICES

Few would seriously dispute that increases in the fee schedule under the Ontario legal aid tariff have fallen significantly behind increases in inflation and the cost of doing business since 1967. In the Council's 1983 report, we noted that inflation increased at about 3 times that of the fee schedule during the first sixteen years of the Legal Aid Plan. The government has taken no action to seriously address this situation during the intervening 30 months.

3.1 A Comparison With Fee Schedules In Health Care

The Canadian Bar Association - Ontario, in its May 1985 analysis of the adequacy of the OLAP Tariff, makes the following telling points:

- adjusting for inflation, a lawyer accepting a legal aid certificate in 1984 received only 53 per cent of the amount provided for in the 1967 Tariff
- since 1967, increases in the Tariff have totalled only 73.5 per cent compared with cost of living increases totalling 227.4 per cent

In addition the brief notes that increases in the tariff have lagged substantially behind fee schedule increases for health professionals, as evidenced by the following chart.

Most revealing are the changes in the OLAP Tariff in relation to changes in the O.H.I.P. fee schedule. Between 1967 and 1979, the legal aid Tariff increased by 50 per cent as compared with 70 per cent for the O.H.I.P. fee schedule. By contrast, the OMA fee schedule increased by nearly 120 per

Cumulative Percentage Increases

	1967 - 79	1979 - 84	1967 - 84
Legal Aid Tariff	50.0	15.7	73.5
Ontario Dental Association Tariff	93.6	48.7	187.9
Ontario Medical Association fee schedule	118.1	60.1	249.1
Ontario Health Insurance Plan fee schedule	69.7	72.0	191.8

cent. Since then, however, OHIP fees are up by nearly 72 per cent as compared with 60 per cent for the OMA schedule. The legal aid Tariff has been increased by less than 16 per cent. Thus, while government has worked diligently to reduce the gap between the OHIP and OMA fee schedules nothing has been done to rectify the growing disparity between legal aid fees and the costs of retaining private counsel.

In the spring of 1985, the Ontario government retained Mr. Graeme McKechnie as a factfinder to determine the extent to which the tariff as of December 1984 had fallen behind the real value of the tariff (net of inflation) in 1967. His report recommended an 83 per cent increase to be phased in by January 1st, 1988 plus the elimination of the existing 25 per cent reduction in fees contributed by lawyers participating in the plan.

3.2 Inadequate Fees Discourage Experienced Lawyers

In general, overhead costs account for between 50 and 55 per cent of gross receipts collected according to two major studies of the costs of practi-

cing law in Canada since 1980. Overhead costs include such items as support staff salaries, occupancy costs, supplies and equipment, postage and telephone expenses. By assuming that, on average, overhead costs amounted to 52 per cent of fees collected, and that lawyers are able to bill the legal aid plan an average of 1300 hours/year, it is possible, as is shown in Table 4, to estimate the incomes that lawyers would receive if they were to bill all of their legal services under the Plan.

Table 4

Net Annual Incomes Under Legal Aid, 1985

Remuneration at 75 Per Cent of Fees	Base Rate	4 Years+	10 Years +
Higher Courts	$16,744	$18,837	$20,930
Lower Courts	14,352	16,146	17,940
Remuneration at 100 Per Cent of Fees	**Base Rate**	**4 Years+**	**10 Years+**
Higher Courts	$34,944	$39,312	$43,680
Lower Courts	29,952	33,696	37,440

Regardless of experience, the net incomes of lawyers under the present Tariff are ridiculously low. Incomes range from a low of $14,352 for lawyers with less than four years experience working in the lower courts, to a high of $20,930. for lawyers with more than ten years experience working in the upper courts. Further, if the requirement that lawyers contribute 25 per cent of their fees toward the cost of the plan were removed, then net incomes rise dramatically - more than doubling in all cases.

For the year ending March 1984, less than half of Ontario's practicing lawyers accepted legal aid cases, and fewer than one in six billed the plan in excess of $5,000. It must be stressed that the 25 per cent reduction in fees on all accounts submitted to the Ontario Legal Aid Plan continues to be financed by the already undercompensated lawyers who choose to participate in the plan. The Canadian Bar Association - Ontario indicates that the proportion of lawyers willing to take on legal aid cases has declined by nearly ten per cent during the last year alone, and that more than two-thirds of all cases are being handled by lawyers with less than four years experience.

Another problem frequently cited by practicing lawyers relates to the time limits and block fees imposed on certain procedures. This is particularly true for many aspects of family law and case preparation for administrative tribunals. For instance, the tariff permits only five hours for the preparation of workers' compensation cases. Lawyers preparing such cases often run the risk of being uncompensated for work exceeding five hours, rather than doing a less than adequate job of preparation within the limit that may seriously prejudice their client.

The inadequate time allowed to prepare cases, coupled with the low compensation provided by the tariff, makes it increasingly difficult for community clinics to find members of the private bar willing to take referrals of legal aid cases. The personal sacrifices required by many competent, experienced lawyers in accepting a legal aid case amounts to an act of charity. It is unfair both to lawyers and potential clients to create this situation, and it runs counter to the original intent of the Ontario Legal

Aid Plan to provide access to quality legal representation to all, regardless of means.

3.3 The Levy System Proposal

In recent statements, the Ontario Attorney-General has recognized the gross inequity represented by this additional sacrifice from already undercompensated lawyers. He is publicly advocating a levy system to which all of the Province's practicing lawyers would be expected to contribute. Rather than having some lawyers handling primarily legal aid cases contributing up to $10,000 and more toward OLAP while others contribute nothing, the Attorney-General proposes a levy on each lawyer of approximately $470/year. Taken in conjunction with proposals to implement a significant increase in the legal aid Tariff, this proposal could reduce the legal profession's contribution to OLAP by more than 50 per cent while spreading the burden more equitably among all practicing lawyers.

While this proposal represents a substantial improvement over the existing tariff structure, the legal profession has been less than enthusiastic in its response. Not unreasonably, they ask why lawyers should be expected to continue to subsidize the operation of legal aid when doctors are not required to subsidize O.H.I.P. Though supportive of some form of continued contribution by the legal profession as a whole to legal aid, the Law Society of Upper Canada recently indicated in a letter to the Attorney-General that it is entirely inappropriate to ask the profession to contribute by way of an individual levy as a condition to the implementation of the Fact Finder's recommendations.

It should be noted that only two other provinces, New Brunswick and British Columbia, require lawyers undertaking legal aid cases to make a contribution to the costs submitted for payment. No province has in force a mandatory levy system along the lines of the one proposed by the Attorney General.

IV. ACCESS TO LEGAL AID SERVICES

Measuring access to legal aid services is made difficult by the limited nature of available data. This section draws primarily upon indicators of service utilization for Ontario and the Toronto region. In addition, it includes an assessment of caseload and expenditure data for Ontario in relation to that evident in other provincial jurisdictions. Finally, it contains a descriptive overview of some of the problems being experienced within the community clinic system concerning access to legal services.

4.1 The Legal Aid Certificate Program

Table 5 incorporates data on the following indicators: 1) applications for legal aid as a proportion of total contacts; 2) certificates granted as a proportion of both applications and contacts; and 3) certificates refused as a proportion of applications. The Table contains information covering the 1976 to 1984 period to permit observations of both short-term and longer term trends.

Looking at contacts, which includes any person seeking assistance either by phone or in person (including those referred to community clinics or other

appropriate agencies), the pattern for Ontario as a whole shows remarkable consistency. Contacts have increased by a modest 18 to 20 per cent since 1976, and by 7 or 8 per cent since 1981. The pattern evident in the Toronto region and the rest of Ontario varies considerably. Between 1976 and 1981, contacts in the Toronto region grew by more than 20 per cent, and have subsequently declined by 10 to 12 per cent during the three year period ending in 1984. The rest of Ontario demonstrated a more modest 4 or 5 per cent growth in contacts from 1976 to 1981, but more than a 15 per cent growth since 1981.

For Ontario as a whole, applications for legal aid have remained a fairly constant proportion of total contacts, varying from a high of 53 per cent in 1976 to a low of 49 per cent in 1979. The Toronto region has seen variations from a high of 62 per cent in 1976 to a low of 47 per cent in 1982. The rest of Ontario shows a similar pattern to that for Ontario as a whole with a high of 52 per cent and a low of 47 per cent. For the 1983 - 84 fiscal year, data on applications as a per cent of contacts for all three areas are virtually identical.

Slightly more than 71 per cent of those applying were granted a certificate in 1984. The rate of refusal has fluctuated between 27 and 29 per cent for the seven year period ending in 1984. Throughout this period, the rate of refusal has been 40 to 50 per cent higher than was the case in 1976. For the Toronto region, nearly 35 per cent of those applying for a certificate were refused in 1984. While this continues to be well above the level for Ontario as a whole, it does represent a modest improvement from the nearly 40 per cent who were refused certificates in 1981.

Table 5
ONTARIO LEGAL AID PLAN UTILIZATION, 1976 - 1984

ONTARIO

Year Ending (March)	Number Contacting Legal Aid Offices	Applications for Legal Aid Certificates		Certificates Granted			Certificates Refused	
		Number	%	Number	As Per Cent of Applic.	As Per Cent of Contacts	Number	Per Cent of Applic.
1976	202,068	107,193	53.0	86,486	80.7	42.8	20,707	19.3
1977	199,233	103,177	51.8	76,649	74.3	38.5	26,528	25.7
1978	202,485	105,118	51.9	76,730	73.0	37.9	28,388	27.0
1979	225,927	111,539	49.4	80,742	72.4	35.7	30,797	27.6
1980	226,802	118,007	52.0	83,776	71.0	36.9	24,231	29.0
1981	222,679	112,511	50.5	79,943	71.1	35.9	32,568	28.9
1982	222,749	111,456	50.0	81,048	72.7	36.4	30,408	27.3
1983	243,224	124,811	51.3	90,892	72.8	37.4	33,919	27.2
1984	237,429	122,358	51.5	87,001	71.1	36.6	35,357	28.9

TORONTO REGION

Year Ending (March)	Number Contacting Legal Aid Offices	Applications for Legal Aid Certificates		Certificates Granted			Certificates Refused	
		Number	%	Number	As Per Cent of Applic.	As Per Cent of Contacts	Number	Per Cent of Applic.
1976	61,344	38,299	62.4	30,906	80.7	50.4	7,393	19.3
1977	64,564	37,710	58.4	27,931	74.1	43.3	9,779	25.9
1978	64,483	37,740	58.5	27,654	73.3	42.9	10,086	26.7
1979	68,435	37,856	55.3	26,962	71.2	39.4	10,894	28.2
1980	72,131	39,212	54.4	27,244	69.5	37.8	11,968	30.5
1981	76,088	36,606	48.1	22,159	60.5	29.1	14.447	39.5
1982	71,618	33,667	47.0	21,437	63.7	29.9	12,230	36.3
1983	71,253	35,363	49.6	22,694	64.2	31.8	12,669	35.8
1984	67,824	34,634	51.1	22,762	65.7	33.6	11,872	34.3

REST OF ONTARIO

Year Ending (March)	Number Contacting Legal Aid Offices	Applications for Legal Aid Certificates		Certificates Granted			Certificates Refused	
		Number	%	Number	As Per Cent of Applic.	As Per Cent of Contacts	Number	Per Cent of Applic.
1976	140,724	68,894	49.0	55,580	80.7	39.5	13,314	19.3
1977	134,669	65,467	48.6	48,718	74.4	36.2	16,749	25.6
1978	138,002	67,378	48.8	49,076	72.8	35.6	18,302	27.2
1979	157,492	73,683	46.8	53,780	73.0	34.1	19,903	27.0
1980	154,671	78,795	50.9	56,532	71.7	36.5	22,263	28.3
1981	146,591	75,905	51.8	57,784	76.1	39.4	18,121	23.9
1982	151,131	77,789	51.5	59,611	76.6	39.4	18,178	23.4
1983	171,971	89,448	52.0	68,198	76.2	39.7	21,250	23.8
1984	169,605	87,724	51.7	64,239	73.2	37.9	23,485	26.8

*Includes all areas within the judicial district of York County, of which Metropolitan Toronto comprises about 90 per cent.

The rate of refusal in the Toronto region, though down below 35 per cent for the first time since 1980, remains more than 75 per cent above 1976 levels. Thus, a person applying for legal aid in Toronto in 1984 was nearly twice as likely to be refused assistance than was the case eight years earlier. Community clinics indicate that in recent years they have experienced an increase in the number of persons approaching them for assistance on minor criminal matters after being refused access to the certificate program.

4.2 The Duty Counsel Program

Table 6 examines changes in the caseload and expenditure data on the Duty Counsel Program since 1976. As in Table 5, the data has been broken down between the Toronto region and the rest of the province. While the number of applications for certificates has risen only 14 per cent since 1976, the number of persons assisted under the duty counsel program has grown by 63 per cent. Duty counsel activity has grown more than 40 per cent relative to the certificate program during this eight year period.

For the province as a whole, the number of persons assisted has increased from 153,043 to 248,726. Total fees and disbursements have grown from $2.5 million to slightly more than $4 million, an increase of 62 per cent. The average cost/person assisted has remained almost static at slightly more than $16. However, when expenditures on the duty counsel program are adjusted for inflation, total fees and disbursements actually declined over this period and the average cost/person assisted is barely half of what it was eight years ago.

Table 6
Changes in Caseloads and Expenditures
Duty Counsel Program, 1976 to 1984

	Year Ending March 31	Persons Assisted (000's)	Total Fees and Disbursements Current Dollars (000's)	Total Fees and Disbursements Inflation Adjusted (000's)	Average Cost Per Case Current Dollars	Average Cost Per Case Inflation Adjusted
	1984	248.7	$4,034	$2,073	$16.22	$8.34
	1983	244.6	3,839	2,058	15.69	8.41
	1982	226.6	3,468	1,967	15.31	8.68
	1981	221.7	3,393	2,133	15.31	9.62
ONTARIO	1980	208.2	3,199	2,261	15.37	10.68
	1979	184.4	2,603	2,026	14.12	10.99
	1978	175.9	2,515	2,137	14.30	12.15
	1977	158.4	2,508	2,322	15.83	14.66
	1976	153.0	2,490	2,490	16.26	16.26
	Per Cent Change 1976 to 1984	62.5	62.0	(17.7)	(0.2)	(48.7)

	Year Ending March 31	Persons Assisted (000's)	Total Fees and Disbursements Current Dollars (000's)	Total Fees and Disbursements Inflation Adjusted (000's)	Average Cost Per Case Current Dollars	Average Cost Per Case Inflation Adjusted
	1984	79.2	$807	$415	$10.19	$5.24
	1983	80.4	777	417	9.67	5.18
	1982	78.0	785	445	10.05	5.70
	1981	79.7	828	520	10.39	6.53
TORONTO	1980	72.3	772	546	10.68	7.55
REGION*	1979	65.5	740	576	11.30	8.79
	1978	62.3	760	645	12.19	10.36
	1977	49.6	805	745	16.22	15.02
	1976	50.2	823	823	16.39	16.39
	Per Cent Change 1976 to 1984	57.8	(1.9)	(49.6)	(37.8)	(68.0)

	Year Ending March 31	Persons Assisted (000's)	Total Fees and Disbursements Current Dollars (000's)	Total Fees and Disbursements Inflation Adjusted (000's)	Average Cost Per Case Current Dollars	Average Cost Per Case Inflation Adjusted
	1984	169.5	$3,227	$1,658	$19.04	$9.78
	1983	164.2	3,062	1,642	18.65	10.00
	1982	148.6	2,683	1,522	18.06	10.24
	1981	142.0	2,565	1,612	18.07	11.36
REST OF	1980	135.9	2,427	1,715	17.86	12.62
ONTARIO	1979	118.9	1,863	1,450	15.67	12.19
	1978	113.6	1,755	1,491	15.45	13.13
	1977	108.8	1,703	1,577	15.65	14.49
	1976	102.8	1,667	1,667	16.22	16.22
	Per Cent Change 1976 to 1984	64.9	93.6	(0.5)	17.4	(39.7)

*data prior to 1982 includes all of former York County judicial district.

The implementation of the salaried duty counsel program in the Toronto region since 1976 has resulted in substantial cost savings relative to the rest of Ontario. While expenditures on fees and disbursements have grown 94 per cent outside the Toronto region, they have actually declined about 2 per cent in this area. Adjusted for inflation, expenditures have remained nearly constant in the rest of the province but have declined by 50 per cent in the Toronto region.

The data concerning average cost/case reveals that costs in Toronto and the rest of Ontario were virtually the same in 1976. In the last couple of years however, costs in the Toronto region are slightly more than half the level experienced in other parts of the province. In the Toronto area, the cost/case declined from $16.39 to $10.19, a decrease of about 38 per cent. Adjusting for inflation, the cost/case in 1984 was $5.24 - only 32 per cent of the level paid in 1976. By comparison, the rest of the province saw costs/case increase from $16.22 to $19.04, an increase of about 17 per cent. Again adjusting for inflation, the cost/case in 1984 had declined to less than $10 representing nearly a 40 per cent decline.

The duty counsel program is severely constrained in its abilities to assist persons who wish to defend themselves against a criminal charge but who have been refused a legal aid certificate. Duty counsel are available to provide summary legal advice on first appearance in court and at bail hearings for those persons who would be otherwise unrepresented. In cases involving a serious charge, they will assist the person in filling out a legal aid application.

In situations where the person wishes to plead guilty and the case concerns

a criminal matter which can be handled by summary conviction, duty counsel can, and often do, represent such cases in court. They can in fact plea bargain on behalf of clients in an attempt to reduce the charge and the eventual sentence in exchange for a guilty plea. But duty counsel generally do not assist persons who maintain their innocence and require legal assistance in asserting their rights.

If such persons are refused a certificate and can not afford a lawyer they face a difficult choice. They can seek assistance from a community legal clinic, which like the duty counsel program, is not designed to represent people in court on criminal matters. They can decide to proceed unrepresented. Or, they can change their plea to guilty and hope that duty counsel can reduce the charge or at least ensure that they will not have to go to jail.

The rapid growth in the use of duty counsel in the face of a near static situation with respect to the granting of certificates raises a number of issues. While beyond the scope of this paper the following questions need to be examined in detail: 1) to what extent are persons who fail to secure a certificate being forced to rely on duty counsel as their only means of legal representation? 2) is there an increased reluctance to issue legal aid certificates dealing with minor criminal matters? 3) does the lower spending level/case reflect increased workloads among duty counsel, and if so, has this served to erode the quality of legal assistance that they provide, and 4) do the substantially lower costs in the Toronto region argue for an extention of the salaried duty counsel program to other areas of the province.

4.3 Community Legal Clinics

Funding for Ontario's community-based legal clinics has expanded rapidly since the mid-1970's. Since 1976, the system of independent community clinics has expanded from 13 to 44 centres. Even during the economic recession of 1981 - 83, spending on clinics increased substantially. The approved budget has grown from about $4.6 million in 1980 - 81 to nearly $8.3 million in 1983 - 84, an increase of 79 per cent in just three years.

In addition to the variety of consultation, counselling and legal assistance responsibilities outlined earlier, the clinics are also intended to increase citizens' awareness of their legal rights and obligations under the law in non-litigation matters. To enhance this, several clinics have been funded which offer specialized legal services relating to landlord/tenant problems, parole and sentencing, workers' compensation, children's law, environmental law, as well as law for the elderly and for the handicapped. Other clinics provide services to meet the needs of cultural and linguistic communities.

In addition to casework, the lawyers and community legal workers which staff the clinics initiate a host of legal education and preventative law activities designed to improve access to legal services and promote the legal welfare of their communities. These activities make an important contribution to the administration of justice in Ontario.

The Canadian Bar Association notes that lawyers and courts are an increasingly expensive and often unnecessary solution to many problems in our society. Many costly legal problems can be prevented if people are aware of their rights and responsibilities at an early stage. The provision of

timely, accurate and effective self-help materials and advice, usually through volunteers or trained para-legals, represent an efficient and necessary supplement to traditional representational services.

As noted previously, community clinics indicate an increase in the number of persons seeking assistance to deal with minor criminal offences. They believe there is a growing reluctance on the part of the legal aid plan to issue certificates dealing with matters such as disorderly conduct, shoplifting, break and enter or even impaired driving where the penalty if found guilty would not involve going to jail.

While many minor offences handled by summary conviction do not carry an immediate threat of imprisonment, similar future offences may, with previous convictions furnishing contributing evidence in arriving at a decision. Therefore, it is critical that persons seeking assistance have access to appropriate and necessary legal services in asserting their legal rights even on minor criminal matters.

Neither the community clinics nor the duty counsel program are staffed and equipped to provide people wishing to assert their innocence in minor criminal matters with access to quality legal representation. The Ontario Legal Aid Plan must ensure that these persons have access to quality legal representation through the certificate program.

Community legal clinics are concerned about the implications of more complicated and onerous financial eligibility standards within the Certificate Program, as well as the difficulty in finding experienced lawyers who are willing to accept legal aid referrals. In addition, concerns have been

expressed that the financial eligibility criteria used in assessing applications for certificates will be used as a basis for developing similar guidelines to be imposed on the independent community clinics.

About one year ago, the Clinic Funding Committee began a consultation process with community clinics in an attempt to introduce greater commonality among clinics regarding income ceilings and financial eligibility guidelines. These are set by the Board of Directors of each clinic with respect to the communities they serve. Generally, the guidelines are set at a level appropriate to include both low and moderate income households. Exceptions are permitted on the basis of policies established by the Board relating to such matters as extraordinary financial circumstances, the importance of the legal issues involved to low-income households, the area of the law as it pertains to legal reform, as well as other grounds which are approved by the Board.

In promoting greater consistency among clinics in establishing eligibility criteria, the Clinic Funding Committee seems intent on imposing a two-tier program much like that which serves the certificate program. Automatic financial eligibility would be extended only to those persons living substantially below the poverty line. The clinic would then have discretion to provide legal services to persons living in households with incomes at or just above the poverty line. The proposed income restrictions for households with three or more persons range from about $21,000 to $28,000.

If implemented, clinic staff would be required to provide justifications for assisting many households with incomes in the $15,000 to $30,000 range on the basis of Board policies as noted above. These policies would in

turn have to be approved by the Clinic Funding Committee. Coupled with the added necessity of examining recipients' assets, clinic staff would find a greatly increased portion of their time consumed by financial assessment and screening procedures. Time that would have to be taken away from legal education and community services.

The independent community clinics serve a broader mandate than other aspects of the Ontario Legal Aid Plan, and as such should be permitted wider discretion in providing legal services to the communities they serve. In Metropolitan Toronto, several clinic Boards of Directors have established financial guidelines for families of between $20,000 and $32,000 depending on household size. All families below these limits receive services automatically, while those earning higher incomes must meet Board criteria to qualify. The existing approach would appear to be more flexible and appropriate in ensuring that the independent clinics continue to fulfill their mandates effectively.

A particular problem in the Toronto region concerns immigration problems for persons seeking refugee status at the airport. Generally, there is no one available to represent them at first inquiry and the cumbersome bureaucratic procedures make it difficult for them to obtain a certificate. A partial remedy to their problem would be to have duty counsel services available to those seeking refugee status at the airport.

4.4 An Inter-Provincial Comparison

In assessing the adequacy of Ontario's legal aid program, it is useful to examine the performance of this province in relation to that of other

provincial jurisdictions. This section focuses attention on three aspects: 1) changes in per capita legal aid expenditures by type of cases; 2) the number of approved applications, criminal and civil cases, per 10,000 population; and 3) the percentage distribution of expenditures.

Table 7 examines changes in per capita expenditures on legal aid between 1975 - 76 and 1983 - 84. During this eight year period, Ontario's expenditures increased from $3.05 to $7.90 per capita. For much of this time Ontario has ranked third in per capita expenditures behind only Quebec and Manitoba. In 1983 - 84, a sixfold variation existed between Quebec's

Table 7

Changes In Per Capita Expenditures On Legal Aid
Canada and the Provinces, 1975 - 76 to 1983 - 84

	1975 - 76	1979 - 80	1983 - 84	Rank	Per Cent Change 1976 - 84	Rank
Newfoundland	.71	1.21	2.10	9	195.8	1
P.E.I.	.57	.70	1.48	10	159.6	7
Nova Scotia	1.34	2.34	3.60	7	168.7	5
New Brunswick	1.30	1.06	3.01	8	131.5	9
Quebec	3.21	5.72	8.87	1	176.3	4
Ontario	3.05	4.28	7.90	3	159.0	8
Manitoba	3.05	3.42	7.98	2	161.6	6
Saskatchewan	2.03	4.06	5.84	4	187.7	3
Alberta	1.65	2.20	4.86	6	194.5	2
British Columbia	2.54	4.42	5.77	5	127.2	10
CANADA	N/A	4.21	7.15	-	N/A	-

expenditure level of $8.87 per capita and tenth ranked P.E.I.'s level of $1.48 per capita.

On the other hand, Ontario's rate of increase in per capita spending on legal aid between 1976 and 1984 ranked eighth, ahead of only New Brunswick and British Columbia. The disparities among provinces using this measure are much less pronounced with top ranked Newfoundland showing an increase in per capita expenditures of 195.8 per cent compared with tenth ranked British Columbia's increase of 127.2 per cent.

Table 8 presents data on the number of approved applications, both criminal and civil cases, per 10,000 population for each province. Ontario ranks fifth overall with a rate of 12.43 cases/10,000, but this figure is somewhat misleading. While this province ranks third in the volume of civil cases handled, it ranks only seventh in terms of criminal case activity. Ontario approved fewer legal aid applications concerning a criminal matter in relation to its population than all but the three lowest spending Atlantic provinces of Newfoundland, P.E.I. and New Brunswick.

Table 9 reveals that in only three provinces, Ontario, Manitoba and British Columbia, do government contributions make up less than 90 per cent of program revenues. In three provinces, Ontario, Alberta and New Brunswick, client contributions and cost recoveries account for more than 6 per cent of legal aid revenues. For the remaining seven provinces, this revenue source amounts to less than 2 per cent in all cases. Ontario is also one of only three provinces which require a mandatory contribution by members of the private bar to all legal aid accounts submitted to the plan for payment.

Table 8

Approved Legal Aid Applications Per 10,000 Population,
Canada and the Provinces, By Type of Case, 1983 - 84

	Total Approved Applications			Criminal Cases			Civil Cases		
	Number of Cases	Rate Per 10,000	Rank	Number of Cases	Rate Per 10,000	Rank	Number of Cases	Rate Per 10,000	Rank
Newfoundland	3,211	5.54	10	2,297	3.97	9	914	1.58	10
P.E.I.	728	5.85	8	526	4.23	8	202	1.62	9
Nova Scotia	14,843	17.20	3	9,521	11.03	3	5,322	6.17	5
New Brunswick	4,070	5.74	9	1,588	2.24	10	2,482	3.50	7
Quebec	227,570	34.88	1	81,145	12.44	2	146,425	22.44	1
Ontario	110,041	12.43	5	49,464	5.59	7	60,577	6.84	3
Manitoba	17,668	16.85	4	10,649	10.15	4	7,019	6.69	4
Saskatchewan	25,946	26.03	3	17,988	18.05	1	7,958	7.98	2
Alberta	18,900	8.05	7	15,044	6.41	6	3,856	1.64	8
British Columbia	32,452	11.43	6	21,231	7.48	5	11.221	3.95	6
CANADA	457,660	18.34	-	211,367	8.47	-	246,293	9.87	-

Table 9

Legal Aid Revenues By Sources,
Canada and the Provinces, 1983 - 84 ($000)

	Total	Government Contributions		Lawyers Trust Account Interest		Client Contributions		Other	
	$	$	%	$	%	$	%	$	%
Newfoundland	1,217	1,120	92.0	71	5.8	20	1.6	6	.5
P.E.I.	184	184	100.0	NA	NA	NA	NA	NA	NA
Nova Scotia	3,111	2,945	94.7	NA	NA	30	1.0	136	4.4
New Brunswick	2,137	2,000	98.6	NA	NA	136	6.4	-	-
Quebec	57,842	57,024	98.6	NA	NA	327	0.6	491	0.8
Ontario	69,967	59,545	85.1	5,735	8.2	4,294	6.1	393	0.6
Manitoba	8,369	7,237	86.5	879	10.5	165	2.0	88	1.1
Saskatchewan	5,818	5,752	98.9	NA	NA	45	0.8	22	0.4
Alberta	11,412	10,421	91.3	NA	NA	782	6.9	208	1.8
British Columbia	16,383	13,923	85.0	2,000	12.2	191	1.2	268	1.6
CANADA	178,550	162,252	90.9	8,685	5	5,999	3	1,612	1

V. SUMMARY AND CONCLUSIONS

This discussion paper has examined a variety of aspects relating to equity and accessibility within the Ontario Legal Aid Plan. It doing so, attention was focused on three broad areas: 1) eligibility to receive assistance; 2) financial compensation for participating lawyers; and 3) access to and availability of legal services.

In assessing changes in financial eligibility guidelines introduced in March, 1985, a number of improvements were noted. Shelter costs have been separated from other basic needs with maximum shelter allowances that generally reflect average market rents. Overall, the effect of the new eligibility criteria has been to increase the upper income limits for one and two person households by 40 to 60 per cent, and those for larger households by 25 to 45 per cent. Those households without a car and which have no long-term debts have seen an increase in the limits from $6,840 to $10,464 for single persons and from $16,524 to $20,676 in the case of a family of four.

A number of serious difficulties remain to be addressed however. Households living on incomes which are 30 to 45 per cent below the poverty line are still required to undergo a detailed assessment of their financial resources. Many households with incomes at or near the poverty level will be expected to contribute all or part of their legal aid costs, raising doubts about the fairness of the maximum expenditure limits set.

In addition, the expectation that family partners and other financial sources contribute to an applicant's legal costs can jeopardize that person's ability to receive assistance thereby denying them access to necessary legal services. Finally, the new criteria discriminates against households which save and live within their means permitting them to exempt only $1,000 in liquid assets while permitting allowance exemptions of $3,500 to $5,500 in debt repayment obligations.

In reviewing issues relating to the compensation of lawyers under OLAP, little has been done to rectify the inadequacy of the existing legal aid

tariff which has fallen far behind inflation since 1967. Adjusting for inflation, a lawyer accepting a legal aid certificate in 1984 received only 53 per cent of the amount provided for in the 1967 tariff. This poses a serious problem for equality of access to legal services as fewer and fewer experienced lawyers are willing to undertake legal aid work.

The report also noted the wide disparity between fee increases granted to lawyers under OLAP and those negotiated with physicians under OHIP. During the five years from 1979 through 1984, the fees contained in the legal aid tariff were increased by less than 16 per cent as compared to a 72 per cent increase in OHIP fees. Inflation during this period was about 52 per cent. In the case of OHIP fees, the government demonstrated a willingness to respond to physician concerns that their fees had lost ground to inflation during much of the previous decade. Despite a stronger case, the legal profession has been unable to generate a similar response concerning the legal aid tariff.

Recent statements by the Attorney-General indicate a willingness to substantially increase the legal aid tariff and to drop the requirement that participating lawyers contribute 25 per cent toward any fees submitted. In return, he has proposed that all of the province's practicing lawyers contribute an annual levy toward legal aid costs. Agreement on future tariff increases are temporarily stalled pending a resolution of this issue.

The section discussing access to legal services looked at rates of refusal under the certificate program, and notes a narrowing of the disparity

between refusal rates in Toronto and those in the rest of the province. It also notes that duty counsel activity has increased 40 per cent relative to the legal aid certificate program since 1976. Coupled with the increasing numbers of persons forced to rely on community clinics for assistance with minor criminal offences, the rapid growth in duty counsel activity raises questions about access to necessary legal services.

Research is required to assess the extent to which persons who fail to secure a certificate are thereby forced to rely on duty counsel as their only means of legal representation. The community clinics are not set up to represent people on criminal matters, and the duty counsel program can provide representation on summary offences only for those who wish to plead guilty. Given that spending levels/case for the duty counsel program has been cut by nearly 50 per cent since 1976 while the caseload has grown 62 per cent, there is a need to assess changes in the quality of legal representation available under this program.

An inter-provincial comparison of caseload and expenditure data revealed that Ontario ranks fifth in the number of approved legal aid applications/per capita, but only seventh when looking at applications concerning criminal cases. Outside of Atlantic Canada, Ontario has the lowest rate of approved applications on criminal matters in the country. In addition, Ontario is one of only three provinces where government revenues make up less than 90 per cent of program costs. Client contributions and cost recoveries add more than 6 per cent to program revenues in Ontario, nearly four times the average level contributed in the other nine provinces.

The material presented in this report has raised serious concerns regarding

access to necessary legal services. Several problems remain to be addressed in terms of financial eligibility, compensation to participating lawyers, as well as the availability of legal services. The evidence suggests clear pressures on the legal aid system which are serving to erode its mandate. The Ontario Legal Aid Plan must not come to be seen as a social welfare program aimed at the poorest of the poor. It must be adequately funded to ensure that persons who can not afford to retain private counsel have access to the services required in asserting their legal rights.